



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO. <i>CU</i>
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EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED: *8*

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

091402,357

Applicant(s)

Examiner

Group Art Unit

648

---The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address---

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

Responsive to communication(s) filed on 6/26/01

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 111; 453 O.G. 213.

Disposition of Claims

Claim(s) 1-6

is/are pending in the application.

Of the above claim(s)

is/are withdrawn from consideration.

Claim(s)

is/are allowed.

Claim(s) 1-6

is/are rejected.

Claim(s)

is/are objected to.

Claim(s)

are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on is approved disapproved.

The drawing(s) filed on is/are objected to by the Examiner.

The specification is objected to by the Examiner

The oath or declaration is objected to by the Examiner

Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number)

received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

Notice of Reference to Prior Art

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of International Patent Application (PCT) Status

Other

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This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention for reasons of record. Again, claims 1-6 cannot be understood due to the recitation of "propagating the viruses of each type or species on cells which are permissive for the viruses but which do not induce any viral interference". That is, viral interference would prevent cells from being permissive. Thus, either a cell is permissive, or not permissive, for a specific virus or type of virus. Applicants' attempt to remedy by amending the claims by replacing "but" with -- and-- is insufficient for overcoming the rejection since the claim is not now more definite. That is, one cannot determine what is intended by "interference" since a permissive cell by definition is impacted or interfered with by the infecting virus. Thus, "permissive" and "interference" cannot be mutually exclusive.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

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Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Ibanez-Bernal et al. (MEDLINE abstract/Medical and Veterinary Entomology, (1997 Oct) 11 (4) 305-9) for reasons of record.

Applicants argue that Ibanez-Bernal et al. fail to determine different quantities of serotypes by the use of antibodies.

The examiner contends that applicants' claims also fail in providing a method step drawn to quantification.

Claim 5 is rejected under 35 U.S.C. 102(b) as being anticipated by Shaw et al. (MEDLINE abstract/GASTROENTEROLOGY, (1987 Nov) 93 (5) 941-50) for reasons of record.

Applicants argue that not all of the monoclonal antibodies of Shaw et al. are serotype-specific.

The examiner contends that applicants' claim fails to require that their monoclonals are all sero-type specific. Moreover, the sero-type specific limitation is directed to the antigen.

Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by Osterhaus et al. (MEDLINE abstract/DEVELOPMENTS IN BIOLOGICAL STANDARDIZATION (1981) 50 221-8) for reasons of record.

Applicants argue that Osterhaus et al. Do not disclose the propagation of the viruses present in the sample on cells which are permissive for the viruses and the quantitative determination of the different species or types of viruses present in the composition through the use of monoclonal antibodies.

The examiner contends that applicants' argument with respect to Osterhaus clearly fails to

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THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laurie Scheiner, whose telephone number is (703) 308-1122. Due to a flexible work schedule, the examiner's hours typically vary each day. However, the examiner can normally be reached Monday thru Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel, can be reached on (703) 308-4027. Any inquiry of a general nature or relating to the status of this application should be directed to the Group 1600 receptionist whose telephone number is (703) 308-0196.

Correspondence related to this application may be submitted to Group 1600 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). Official communications should be directed toward one of the following Group 1600 fax numbers: (703) 308-4242, (703) 305-3014, (703) 872-9306 or (703) 872-9307. Informal communications may be submitted directly to the Examiner through

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LOI
Laurie Scheiner/LAS
September 7, 2001

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